IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1505 OF 2005.

Smt.Malti Ladu Shelar. ... Appellant.

Versus.

Prabhakar Sakharam Patil. ... Respondent.

Shri Sandesh D.Patil for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2006.

P.C.:

1. Heard Shri Patil for the Appellant. The Second Appeal is by the original Defendant. The suit simplicitor for injunction filed by the Respondent was dismissed by the trial Court. The trial Court accepted the case of the Appellant as regards ownership of the suit land. However, the trial Court held that the Respondent/Plaintiff has not proved that he is in possession. The Appeal Court reversed the finding on the issue of possession and decreed the suit.

2. The learned Advocate for the Appellant submitted that though there was no challenge to the finding as regards the ownership recorded by the trial Court in favour of the Respondent/Plaintiff in the suit for perpetual injunction, it was for the Plaintiff to prove that he was in possession of the suit property. He submitted that there was no independent evidence as regards the possession of the Respondent/Plaintiff on

the date of filing of the suit.

3. I have considered the submissions. There are concurrent findings of facts recorded by the Courts below that the Respondent/Plaintiff is the owner. The name of the Respondent/Plaintiff consistently appears in the possession column of 7x12 extract. The Appellant seems to have relied upon the entries made in the cultivation column on the basis of the enquiry made by the Tahsildar. The Appellate Court noted that the order of the Tahsildar by which name of the Appellant was ordered to be entered in the cultivation column was set aside by the first Appellate authority and the order of the first Appellate Authority has been confirmed by the Second Appellate Authority. If this is the factual position, no fault can be found with the Judgment of the Appellate Court which holds that the Respondent/Plaintiff who is the owner of the said property was in possession of the suit property. No substantial question of law arises. The Second Appeal is dismissed.

Judge.